

## **Kennewick man convicted of killing infant son loses appeal**

**Kristin M. Kraemer, Herald staff writer**

OLYMPIA — A Kennewick man who beat his 7-month-old son to death in 1998 will remain in prison for several more years after losing his appeal.

Robert Darrell Moore, 35, had hoped to get his conviction thrown out for a second time.

But a Washington state Court of Appeals commissioner has ruled that prosecutors and a Benton County judge did nothing wrong in sending Moore to prison for 18 years and five months on the first-degree manslaughter charge.

Moore has been locked up since shortly after the death of Anthony G. Miller, and currently is at Airway Heights Corrections Center near Spokane.

He is expected to serve another four to five years before being released, according to Benton County Prosecutor Andy Miller.

Moore's appellate attorney, Janet Gemberling of Spokane, couldn't be reached for comment Monday afternoon.

Gemberling has 30 days to file a motion to modify with the Court of Appeals if she objects to the ruling. She also can petition the state Supreme Court for review.

The appeal has twice been stayed since 2006 while the appellate court awaited Supreme Court decisions in other cases that may have affected Moore's arguments in his own case.

Miller said there was never a question that Moore killed the baby, but he believes Moore was hoping to get off on a loophole. He was happy with the court's decision.

"The sentence that was affirmed today was substantially the same sentence that he got before the Supreme Court reversed his case for Andress which, given the horrible and sad facts of this case, makes the long sentence appropriate," Miller said Monday.

Moore was first convicted in 1999 of second-degree murder. He had been watching the infant in November 1998, when he hit the boy with at least five blows to the torso and four blows to the head, including a fatal strike that broke his son's skull.

The child's mother and Moore's then live-in girlfriend, Dawn Miller, was at work.

Anthony died at a hospital as a result of the injuries.

Moore was serving a 19-year sentence when the Supreme Court in 2004 invalidated all cases filed since 1976 for second-degree murder based on assaults without a proven intent to kill.

He was one of several imprisoned killers from the Tri-Cities whose cases were sent back for new trials or renegotiated plea deals as a result of the high court's controversial decision.

In July 2005, he pleaded guilty to the reduced manslaughter charge, saying it was his "reckless actions that caused substantial injury that resulted in another death."

However, Moore refused to acknowledge the aggravating factors in baby Anthony's death. And despite his agreement to the facts in the case, he shook his head as Superior Court Judge Vic VanderSchoor accepted the guilty plea.

Both Andy Miller and defense attorney Kevin Holt then agreed that Moore did not intend to kill his son when he beat him.

Miller made it clear he would ask for time above the standard range of 10 years and 13 years and two months. Miller said Moore's conduct "manifested deliberate cruelty" to the baby, he had a position of trust and a caretaker relationship with Anthony and he should have known his son was vulnerable or incapable of resistance.

Instead of having a jury listen to the legal arguments and decide if a lengthy sentence was warranted, Moore left it up to a judge.

A month later, VanderSchoor ordered Moore to the 18-year, five-month term. The judge said it was the baby's vulnerability that helped him decide an exceptional sentence was appropriate.

Moore and his lawyer, Holt, both asked for less time. In a letter to the court, Moore said he wanted a chance to show everybody he'd changed behind bars, had become a believer in God and was "a much happier person."

He claimed that not a day has gone by he doesn't dwell on what happened Nov. 3, 1998. "But to be honest with you, your honor, sence (sic) my incarceration I've done a lot of wonderful and good things," he wrote in the letter.

A part of the plea deal allowed Moore to appeal on the grounds that there was no legal authority for the higher sentence and that he was not allowed to plead guilty a few months earlier to a reduced charge without giving the prosecutor more time to consider a lengthier term.

His appeal also alleged double jeopardy, saying that since his murder conviction had been vacated he shouldn't have been charged with manslaughter for the same crime.

The Court of Appeals rejected all of Moore's claims. Commissioner Monica Wasson, in the ruling, said Moore failed to show that Benton County Superior Court abused its discretion by postponing the plea and found no violations regarding the charge or lengthy sentence.

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